



Appeal Decision

Site visit made on 31 May 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/F5540/W/21/3288149

Bowman House, 20-22 Market Place, Brentford TW8 8EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Bowman against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00737/20-22/PA1, dated 28 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is change of use from offices (Class B1(a)) to 4no dwellinghouses (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from offices (Class B1(a)) to 4no dwellinghouses (Class C3) at Bowman House, 20-22 Market Place, Brentford TW8 8EQ in accordance with the application ref 00737/20-21/PA1 dated 28 July 2021 and the plans and details submitted with it including plan Nos 01, 02, 03 and Covering Letter dated 28 July 2021, and the Flood Risk Assessment dated 17 November 2021 (ref AEG0180_TW8_Brentford_01), and subject to the following conditions:
 - 1) Before the development hereby permitted is first occupied, a Noise Report shall be submitted to and approved in writing by the Local Planning Authority. The Noise Report shall include details of noise mitigation and insulation measures as necessary to achieve noise standards within the development in accordance with the criteria of BS 8233:2014. The development shall not be occupied until measures specified within the Noise Report have been completed in accordance with the approved details, and shall be retained as such thereafter.
 - 2) Before the development hereby permitted is first occupied, a Car Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out and maintained in accordance with the approved details.
 - 3) Before the development hereby permitted is first occupied, cycle stands for the occupants of, and visitors to, the development shall be provided in accordance with details (including manufacturer's specifications) which have first been submitted to and approved in writing by the Local Planning Authority. The cycle stands shall thereafter be retained for use at all times without obstruction.

Preliminary Matters

2. The evidence before me refers to the appeal application variously by the references 00737/20-22/PA1 and PAC/2021/3122, with both references stated in the Council's officer report. I have used the application number stated on the Council's decision notice in the banner heading and my formal decision above.
3. As part of the appeal, the appellant submitted a Flood Risk Assessment (ref AEG0180_TW8_Brentford_01) ('FRA') which was not before the Council at the time of its decision. I am mindful that the 'Procedural Guide: Planning Appeals - England' makes it clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. However, it also advises that ongoing discussion between the applicant and the local planning authority should ensure that the applicant has the opportunity to respond to any issues/concerns before the local planning authority's decision is made. This will mean that there should be no unexpected issues raised by that decision. I note that the National Planning Policy Framework ('the Framework') outlines that applications including for development in Flood Zones 2 and 3 should be supported by a site-specific flood risk assessment. However, the appellant indicates that flood risk assessments have not been required for previous applications on the site. In addition, the Council has not disputed the appellant's comments that no assessment was requested giving the appellant an opportunity to respond to this issue before the application was determined.
5. Nevertheless, I must also consider whether taking the FRA into account would prejudice the interests of any parties in accordance with the 'Wheatcroft' principles¹. In this regard, the Council was afforded an opportunity to respond to the FRA as part of its evidence, albeit that it has not commented on the content of the report. In addition, the Environment Agency has been able to review the FRA, and has provided comments on it during the course of the appeal. No other interested parties had commented in relation to matters of flood risk at application stage. In this context and given the nature of the FRA which provides technical information in relation to the proposals risk of and to flooding, and which does not alter the nature or form of the development that is proposed, I am satisfied that my consideration of the FRA would not in this case unacceptably prejudice the interests of any party. I have therefore taken it into account in determining the appeal.

Background and Main Issue

6. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2.
7. There is no dispute between the main parties that the proposal would accord with the limitations at O.1. The conditions at O.2 establish a requirement for

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, p37]

developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters, including at part (1)(c) flooding risks on the site.

8. In determining an application for prior approval, the GPDO requires at paragraph W(10) the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis. In refusing the application, the Council also cited policies of the London Plan 2021 ('LP') and the Hounslow Local Plan 2015-2030 ('HLP'). The prior approval provisions do not require regard to be had to the development plan, and I have therefore only had regard to policies of the development plan insofar as they are material to the matters for which prior approval is sought.
9. Having assessed the proposal, the Council has raised objections in relation to flooding risks on the site. Subject to conditions, it considers that the proposal would be acceptable in relation to the other prior approval matters. I have no compelling reasons to find otherwise.
10. The main issue is therefore whether or not prior approval should be granted having regard to flood risk.

Reasons

11. The appeal proposes to convert existing office space on the first and second floors of a three-storey building to 4 self-contained flats. The appeal site is located partially within Flood Zone 3 which is land defined by the Planning Practice Guidance ('PPG') as having a high probability of flooding. The PPG further details the vulnerability of different types of development to flood risk, and indicates that while the existing office use would be considered a 'less vulnerable' use, the proposed dwellings would be 'more vulnerable'.
12. At the time the Council determined the application, the absence of an assessment of flood risk meant that the flooding risks on the site were unclear. However, the FRA submitted with the appeal assesses flood risk, and outlines that the development would be safe for its lifetime and would not impact on flood risk elsewhere. Upon review of the FRA, the Environment Agency has withdrawn its earlier objections to the proposal, and I have not been provided with any substantive evidence to otherwise challenge the conclusions of the FRA indicating that flooding risks would be acceptable.
13. On the basis of the information before me, I am therefore satisfied that there would not be unacceptable flooding risks on the site, and I find no conflict with the Framework insofar as it seeks to avoid inappropriate development in areas at risk of flooding. The proposal would also accord with Policies EQ3 of the HLP and SI 12 of the LP which include requirements that developments are located appropriately having regard to flood risk, and that proposals ensure that flood risk is minimised and mitigated, further supporting my conclusion that the flooding risks on the site would be acceptable.

Other Matters

14. There would be no change to existing window openings to the appeal building. I acknowledge that the windows would serve dwellings, but I am required to

determine the appeal against Class O of the GPDO, and while I have noted comments that the proposal would result in overlooking and loss of privacy for neighbouring properties, such concerns would be outside the scope of the specified prior approval matters within this Class.

15. The site is within an area of mixed uses, and adjoins The Weir Public House which has an outdoor seating area to the rear. Outdoor food preparation may result in some odour or smoke, but neither these matters nor provision of boundary treatment or refuse storage may be considered as part of the assessment of a proposal under Class O. Noise from commercial premises is a relevant prior approval matter. However, the Council considers that appropriate internal noise levels could be achieved through provision of sound insulation, and has recommended a condition which would require a noise assessment and compliance with relevant standards. I have no firm reason to take a different view, and subject to a condition, I am satisfied that noise from commercial premises would not unacceptably impact on the intended occupiers of the development. On this basis, I do not consider the proposal would unacceptably impact on the trading or operation of The Weir.

Conditions

16. The development must adhere to the conditions set out at Paragraph O.2.(2), and the provisions at Paragraph W(12) of Part 3, which require that development permitted under Class O is completed within a period of 3 years starting with the prior approval date, and that the development must be carried out in accordance with the approved details. Conditions suggested by the Council stipulating the time limit for development to be completed and the approved plans are therefore unnecessary.
17. Section W (13) of Part 3 of Schedule 2 of the GPDO allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
18. A condition to require a Noise Report is necessary to ensure that impacts of noise from commercial premises on the intended occupiers of the development would be acceptable. In addition, I have imposed conditions to require a car parking management plan and provision for cycle storage which are necessary to ensure that the transport and highways impacts of the development would be acceptable through ensuring appropriate provision of parking on the site and the promotion of alternative means of travel to private vehicles. I have however amended the Council's suggested conditions to ensure that they are suitably precise and in the interests of consistency and clarity.
19. The Council has suggested a condition seeking a restriction on the use of the dwellinghouses, but the reasons given refer to protection of the character of the locality, to ensure adequate living standards and to prevent unacceptable disturbance to neighbours which are not in my view reasonably related to the prior approval matters. Similarly, I am not persuaded that a condition to require charging points for electric vehicles would be reasonably related to the prior approval matters. I have not therefore imposed these conditions.
20. The Environment Agency has requested that an informative relating to requirements to obtain flood risk activity permits is attached to any permission. This would have no legal effect, and I have not therefore included it on the

decision. However, the appellant has in any case had sight of the Environment Agency's representations and should be aware of the suggested informative.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J Bowyer

INSPECTOR